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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2011 SEP 23 A 9:09

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 28 2011

DOCKETED BY

[Signature]

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY
LLC FOR AN EMERGENCY RATE INCREASE.

DOCKET NO. W-04254A-11-0296

PROCEDURAL ORDER

BY THE COMMISSION:

On July 25, 2011, Montezuma Rimrock Water Company LLC ("Montezuma Rimrock") filed with the Arizona Corporation Commission ("Commission") an application for an emergency rate increase, requesting that Montezuma Rimrock be authorized to charge each of its customers a monthly surcharge of \$15.64, which is designed to increase Montezuma Rimrock's annual revenues by \$37,536, thereby making Montezuma Rimrock eligible to obtain a loan of \$165,000 from a private lending institution to fund construction and installation of an arsenic treatment system. The water from Montezuma Rimrock's system currently exceeds the maximum contaminant level ("MCL") for arsenic established by the United States Environmental Protection Agency ("EPA") and enforced by the Arizona Department of Environmental Quality ("ADEQ"). ADEQ, through Amendment #1 to Consent Order in Docket No. DW-36-10, has provided Montezuma Rimrock a deadline of April 7, 2012, to complete construction of the approved arsenic treatment system and to submit an administratively complete application for an Approval of Construction for the arsenic treatment system.

Between July 25, 2011, and August 24, 2011, in this docket, a procedural conference was held; John E. Dougherty was granted intervention; consolidation of this docket with a related docket ("40-252 Docket")¹ was discussed and not ordered; a procedural schedule was established that includes a

¹ The 40-252 Docket is Docket Nos. W-04254A-08-0361 et al., in which the Commission has reopened Decision No. 71317 (October 30, 2009) under A.R.S. § 40-252 in response to a Montezuma Rimrock request for modification of the decision to allow it to obtain financing for arsenic treatment facilities through a loan from a private financial institution rather than through the Arizona Water Infrastructure Finance Authority ("WIFA") loan authorized in the Decision.

1 hearing to be held in this matter on September 22, 2011; and an Affidavit of Mailing and Posting was
2 filed showing that notice of the hearing has been provided to Montezuma Rimrock's customers by
3 mail and has been posted at four separate locations in Montezuma Rimrock's service area.²

4 On August 31, 2011, in this docket, Mr. Dougherty filed Notice of having filed a Formal
5 Complaint ("Complaint") against Montezuma Rimrock in Docket No. W-04254A-11-0323
6 ("Complaint Docket")³ and a Motion to Stay the proceedings in this docket. Mr. Dougherty asserted
7 that the Complaint includes numerous allegations supported by substantial documentation that
8 Montezuma Rimrock has filed materially false and misleading financial statements in Annual Reports,
9 improperly withheld information during a 2009 Staff audit in its most recent rate case, and made a
10 false statement on its 2009 WIFA loan application, among other things. Mr. Dougherty asserted that,
11 in light of the allegations in the Complaint, all proceedings in this docket should be stayed until the
12 allegations raised in the Complaint have been fully answered by Montezuma Rimrock. Mr. Dougherty
13 filed a substantially similar Notice and Motion to Stay in the 40-252 Docket.

14 Also on August 31, 2011, in this docket, Montezuma Rimrock filed a Motion for Protective
15 Order, along with a separate Certificate of Counsel in Support of Motion for Protective Order,
16 requesting that the Commission quash or severely limit the scope of Mr. Dougherty's data requests so
17 as to protect Montezuma Rimrock from annoyance, embarrassment, oppression, or undue burden or
18 expense.

19 On August 31, 2011, Procedural Orders were issued in this docket, the 40-252 Docket, and the
20 Complaint Docket scheduling a joint procedural conference to be held on September 13, 2011, at the
21 Commission's offices in Phoenix; requiring each party to attend in person; and requiring each party to
22 be prepared to discuss the Motion to Stay in this docket, the Motion to Stay in the 40-252 Docket, the
23 Motion for Protective Order in this docket, how the three dockets should proceed, whether any or all
24 of the three dockets should be consolidated, and any other appropriate issues.

25 In this docket, since the issuance of the Procedural Order of August 31, 2011, Mr. Dougherty
26 has filed a Response to Motion for Protective Order, and Staff has filed a Staff Report in which Staff

27 ² Additional procedural background in this matter is set forth in the Procedural Order issued on August 12, 2011.

28 ³ Mr. Dougherty and a co-complainant filed a Formal Complaint in the Complaint Docket on August 23, 2011.

1 recommends denial of Montezuma Rimrock's emergency rate case application.

2 On September 13, 2011, a procedural conference was convened as scheduled before a duly
3 authorized Administrative Law Judge of the Commission at the Commission's offices in Phoenix,
4 Arizona. Montezuma Rimrock and Staff appeared through counsel, and Mr. Dougherty appeared pro
5 se. Montezuma Rimrock and Staff both opposed staying the proceedings in this docket, with
6 Montezuma Rimrock arguing that the paramount issue should be the quality of customers' drinking
7 water and that a stay of the proceedings in this docket would not improve that, and Staff arguing that a
8 stay in this docket would defeat the purpose of the emergency rate case process. Mr. Dougherty
9 argued that a stay is appropriate because any delay would not be significant, Montezuma Rimrock
10 purposely avoided service of the Complaint so as to be able to respond to the Complaint after the
11 hearing in this docket,⁴ and Montezuma Rimrock has provided the Commission false financial
12 information that undermines its assertions as to the necessity for the emergency rate increase. The
13 parties' arguments were taken under advisement.

14 During the procedural conference, Montezuma Rimrock and Mr. Dougherty agreed to have
15 Mr. Dougherty review the requested Montezuma Rimrock records,⁵ on September 19, 2011, in the
16 controlled setting of counsel's office, so that Mr. Dougherty can extract the information that he seeks
17 and make copies as necessary. Montezuma Rimrock also agreed to provide releases of information to
18 the extent necessary to allow Mr. Dougherty to obtain records from third parties such as banks without
19 resort to the Commission's subpoena power. As a result of the parties' agreement, which Montezuma
20 Rimrock stated resolved their discovery dispute, Montezuma Rimrock withdrew its Motion for a
21 Protective Order in this docket.

22 Regarding the question whether any or all of the three separate proceedings should be
23 consolidated going forward, Montezuma Rimrock and Staff continued to oppose consolidation, and
24

25 ⁴ The Complaint was sent to a physical street address for Montezuma Rimrock's office and came back to the
26 Commission as undeliverable. Montezuma Rimrock stated at the procedural conference that there is no mail delivery to its
27 office, only to its post office box.

28 ⁵ Montezuma Rimrock's owner, Patricia Olsen, asserted for the first time during the procedural conference that some
documents are missing from Montezuma Rimrock's records and that some entries in Montezuma Rimrock's records
appear to have been altered, both of which Ms. Olsen attributes to Montezuma Rimrock's office's having been
"burglarized" on several occasions since October 2009. Ms. Olsen also stated that her computer had been "hacked" on
multiple occasions since October 2009. Ms. Olsen stated that no police reports were filed.

1 Mr. Dougherty conditionally supported consolidation, depending on the rulings on the pending
2 Motions to Stay. The parties' positions on consolidation were again taken under advisement.

3 On September 14, 2011, a Procedural Order was issued denying Mr. Dougherty's Motion to
4 Stay in this docket.

5 On September 19, 2011, Mr. Dougherty filed Intervenor's Response to Staff Report and
6 Company's Request for Emergency Rate Increase; Motion to Amend Staff Report; Motion to
7 Continue Emergency Rate Increase Hearing. In this filing, Mr. Dougherty requested that Staff be
8 directed to provide a financial analysis of Montezuma Rimrock's emergency rate application before
9 the scheduled hearing or, if that were not possible, that the hearing be continued until after such a
10 report is prepared and docketed. Mr. Dougherty also requested that Staff be required to amend the
11 Staff Report to include reference to the Complaint Docket.

12 Between September 16 and 19, 2011, three sets of public comment were docketed, one
13 supporting the emergency rate increase, one opposing the emergency rate increase, and one a letter
14 from the National Park Service requesting that the Commission hold a hearing in this docket and
15 urging that Montezuma Rimrock be required to complete an environmental impact statement as a
16 condition of funding the arsenic treatment facilities.

17 On September 19, 2011, Montezuma Rimrock filed its response to the Staff Report, asserting
18 for the first time that Montezuma Rimrock is "insolvent or on the brink of insolvency." Montezuma
19 Rimrock did not provide any documentation or financial data to support this assertion.

20 On September 21, 2011, Mr. Dougherty filed Intervener's Status on Discovery; Intervener's
21 Notice of Intent to Use Audio/Visual Equipment to Present Evidence; Submission of Petitions.
22 Therein, Mr. Dougherty asserted that discovery had not yet been completed; that not all of Montezuma
23 Rimrock's available records had been provided to him on September 19, 2011; and that a number of
24 bank records were missing and had been requested from the bank but not yet received. Mr. Dougherty
25 stated that this information supported his previous motion for a continuance of the scheduled hearing
26 in this docket.

27 On September 22, 2011, the hearing was convened before a duly authorized Administrative
28 Law Judge of the Commission at the Commission's offices in Phoenix, Arizona. Montezuma

1 Rimrock and Staff appeared through counsel, and Mr. Dougherty appeared pro se. The issue of
2 incomplete discovery was discussed, and the parties' positions on continuance were expressed.
3 Montezuma Rimrock acknowledged that it had first asserted insolvency in its response to the Staff
4 Report and, further, acknowledged that it is not in imminent danger of ceasing operations without its
5 requested emergency rate increase. It was determined that as Montezuma Rimrock had essentially
6 amended its emergency rate application when it asserted insolvency in its response to the Staff Report,
7 and had not to date provided any financial data supporting that assertion, it is necessary for
8 Montezuma Rimrock to file verified testimony and exhibits supporting its current position and for
9 Staff and Mr. Dougherty to make filings analyzing such testimony and exhibits. Staff was directed to
10 make its responsive filing in the form of an Amended Staff Report that includes an analysis of the
11 financial data provided by Montezuma Rimrock. Montezuma Rimrock and Mr. Dougherty were also
12 directed to file and exchange their exhibits now and on an ongoing basis, as soon as it is determined
13 that a previously unidentified document will be an exhibit. Montezuma Rimrock requested a week to
14 prepare its testimony and exhibits and was granted 10 days to do so, and Mr. Dougherty and Staff
15 were advised that they would each have 30 days after Montezuma Rimrock's filing to file their
16 documents. Public comment was received from two individuals, one of whom owns property in
17 Montezuma Rimrock's service area, and the other of whom is a customer of Montezuma Rimrock.
18 The parties also identified the witnesses that they intended to call at hearing, and Mr. Dougherty was
19 informed that all exhibits must be reduced to letter size paper so that they can be docketed as part of
20 the transcript. Finally, the evidentiary portion of the hearing was adjourned until a later date to be
21 established by Procedural Order.

22 Also on September 22, 2011, very shortly after the hearing had adjourned, the parties
23 requested a proceeding to address a dispute that had ensued between Montezuma Rimrock and Mr.
24 Dougherty. A procedural conference was convened before a duly authorized Administrative Law
25 Judge of the Commission, with Montezuma Rimrock and Staff appearing through counsel and Mr.
26 Dougherty appearing pro se. Montezuma Rimrock expressed a desire for a deadline by which all
27 discovery must be completed, which was opposed by both Mr. Dougherty and Staff. Montezuma
28 Rimrock's request was denied. The parties were informed that discovery can be ongoing but must be

1 focused on issues that are relevant within the context of the emergency rate case rather than the
2 broader issues that have been raised in the Complaint Docket; were informed that the object of the
3 proceeding is to develop a full evidentiary record upon which the Commission's decision can be
4 based; and were advised that they are not to engage in gamesmanship or to attempt to surprise each
5 other in any way.

6 Thus, it is now appropriate to reschedule the evidentiary hearing in this matter.

7 IT IS THEREFORE ORDERED that the **evidentiary hearing** in this matter **shall commence**
8 **on November 10, 2011, at 9:30 a.m.**, in Hearing Room No. 1 at the Commission's offices in
9 Phoenix, Arizona.

10 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
11 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

12 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
13 Communications) applies to this proceeding and shall remain in effect until the Commission's
14 Decision in this matter is final and non-appealable.

15 IT IS FURTHER ORDERED that any motion filed in this matter that is not ruled upon by the
16 Commission within 20 calendar days of the filing date of the motion shall be deemed denied.

17 IT IS FURTHER ORDERED that any response to a motion shall be filed within five calendar
18 days of the filing date of the motion.

19 IT IS FURTHER ORDERED that any reply shall be filed within five calendar days of the
20 filing date of the response.

21 IT IS FURTHER ORDERED that **discovery** shall be as permitted by law and the rules and
22 regulations of the Commission, except that any objection to discovery requests shall be made within 7
23 calendar days of receipt,⁶ and responses to discovery requests shall be made within 10 calendar days
24 of receipt. The response time may be extended by mutual agreement of the parties involved if the
25 request requires an extensive compilation effort.

26 IT IS FURTHER ORDERED that for discovery requests, objections, and answers, if a
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28 ⁶ The date of receipt of discovery requests is not counted as a calendar day, and requests received after 4:00 p.m. Arizona time will be considered as received the next business day.

1 receiving party requests service to be made electronically, and the sending party has the technical
2 capability to provide service electronically, service to that party shall be made electronically.

3 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel
4 discovery, any party seeking resolution of a **discovery dispute** may telephonically contact the
5 Commission's Hearing Division to request that a procedural conference be scheduled to resolve the
6 discovery dispute;⁷ that upon such a request, a procedural conference will be convened as soon as
7 practicable; and that the party making such a request shall forthwith contact all other parties to advise
8 them of the date and time of the procedural conference and shall at the procedural conference provide
9 a statement confirming that the other parties were notified of the date and time.

10 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
11 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
12 Supreme Court Rule 42). Representation before the Commission includes appearing at all hearings,
13 procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless
14 counsel has previously been granted permission to withdraw by the Administrative Law Judge or the
15 Commission.

16 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or
17 waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
18 hearing.

19 DATED this 23rd day of September, 2011.

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22 
23 SARAH N. HARPRING
24 ADMINISTRATIVE LAW JUDGE
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27 ⁷ The parties shall attempt to settle discovery disputes through informal, good-faith negotiations before seeking
28 Commission resolution of the controversy. A party shall ensure that any motion to compel is accompanied by the separate
certification required by Arizona Rule of Civil Procedure 26(g) and 37(a)(2)(C) and that such a certification could also be
made at any requested procedural conference.

Copies of the foregoing mailed/delivered
this 23rd day of September, 2011, to:

Patricia D. Olsen, Manager
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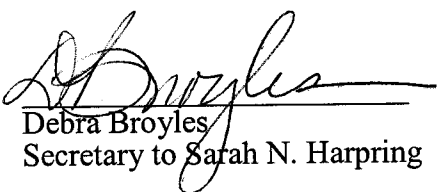
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